



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2015-21
May 13, 2015

Sales and Use Tax Assessment for Audit Period
June 1, 2010 through June 30, 2010

FINAL RULING

The Department of Revenue ("the DOR") has a sales and use tax assessment against [REDACTED] ("[REDACTED]") for the audit period June 1, 2010 through June 30, 2010. The following schedule reflects the outstanding liability for this period:

Period	Tax Due	Interest as of 5/13/15	Total Due per Period
6/1/10-6/30/10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Information available to the DOR indicated that [REDACTED] purchased a YXR45FHY ATV (All Terrain Vehicle) for \$ [REDACTED] from [REDACTED] Inc. of [REDACTED], KY. This information also indicates Kentucky Sales Tax was not paid at the point of purchase due to a signed farm machinery exemption certificate given to the vendor. [REDACTED] was sent an affidavit to complete stating the ATV was used for farming only. Despite multiple requests, the required affidavit was not submitted. Therefore, an assessment in the amount of \$ [REDACTED] (plus applicable interest) was created. [REDACTED] timely protested the assessment.

In response to the assessment, [REDACTED] stated that the equipment purchased by her and her husband was purchased solely for the benefit of farm operations which included sixty plus head of cattle, hay, tobacco, and farming related activities. The Division of Sales Tax requested a copy of [REDACTED]'s 2010 Federal Schedule F that would serve as proof of being in the occupation of farming at the time of the purchase of the ATV in question. Letters dated [REDACTED], 2013, [REDACTED], 2014 and [REDACTED], 2014 were sent to [REDACTED] requesting the 2010 Federal Schedule F but to date that schedule has not been received.

At issue is whether [REDACTED] has complied with the requirements of KRS 131.110(1) which states in pertinent part:

The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the Department may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable.

The Kentucky courts have held this statutory provision imposes upon a taxpayer protesting an assessment or a refund denial a legal duty to provide the DOR with "something more substantial than mere denials of tax liability". Eagle Machine Co., Inc. v. Commonwealth ex rel. Gillis, 698 S.W.2d 528, 530 (Ky. App 1985). In order to make a valid protest, a taxpayer must "provide financial statements, records or some other documentation that would allow the Department of Revenue some basis for reconsideration."

The courts have further held that KRS 131.110(1) is "mandatory in nature" and that failure to submit documentation as it requires will result in a taxpayer's loss of the right to further review of the assessment or refund denial in question. Scotty's Construction Co. v. Revenue Cabinet, 779 S.W. 2d 234 (Ky. App. 1989). In both Scotty's Construction and Eagle Machine, the taxpayers failed to provide appropriate documentation in support of their denials of tax liability, despite being given ample opportunity to do. The same is true in this matter.

Based on the above, the outstanding sales and use tax assessment totaling \$[REDACTED] (plus applicable interest) is a legitimate liability of [REDACTED] due to the Commonwealth of Kentucky.

This letter is the final ruling of the Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals (the "Board") are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and

4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET


Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED